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February 19, 2021

Honorable Kenneth M. Karas  
United State District Judge  
United States District Courthouse  
Southern District of New York  
300 Quarropas Street  
White Plains, NY 10601

BY ECF AND EMAIL/PDF

**Re: USA v. Frank Nesbitt, 19 Cr. 245 (KMK)**  
**Letter Motion for Telephonic Sentencing Hearing**

Dear Judge Karas:

I am appointed to represent the defendant, Frank Nesbitt, who is scheduled to be sentenced by this Court on Thursday, March 18, 2021 at 10:30 am. For the reason detailed herein, my client wishes to waive his physical appearance and to have the sentencing hearing conducted telephonically.

On October 26, 2020, the defendant pleaded guilty before the Honorable Judith C. McCarthy to a single count Superseding Information, conspiracy to possess and distribute marijuana, pursuant to 21 U.S.C 841(B)(1)(D). This case has been pending against Mr. Nesbitt for almost two years and he has been compliant with all conditions of pretrial release. Probation has recommended a time served sentence and has found him to be a good candidate for voluntary surrender, should the Court deem that appropriate. (ECF Doc No. 129, Addendum, p. 16, 21). Mr. Dixon is the sole caregiver to three minor children who reside with him, one of whom suffers from autism and cannot verbally communicate. Given this circumstance, together with the longevity of this case, in addition to employment and other personal factors, the defendant wishes to proceed without delay with sentencing, achieve closure, and move on from this terrible period of his life. Given the ongoing Covid-19 Pandemic, he waives his personal appearance and agrees to appear telephonically.

Pursuant to §15002(b)(2)(A) of the CARES Act, guilty pleas and sentencings may proceed by video or telephone: first, if the chief judge of the district "specifically finds . . . that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted in person without

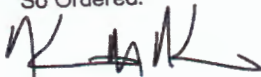
seriously jeopardizing public health and safety”.<sup>1</sup> And second, if “the district judge in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice...”

Due to the foregoing and with consent of the Government, I write to the Court to request a finding that the defendant’s sentence “cannot be further delayed without serious harm to the interests of justice”, and that the Sentencing Hearing may therefore proceed by telephone, as scheduled.

Thank you, Your Honor, for your consideration of this matter.


Granted. The Court finds, for the reasons described herein, that Defendant’s sentence cannot be further delayed without serious harm to the interests of justice and, therefore, the sentence may proceed by telephone as scheduled.

So Ordered.

  
2/19/21

Very truly yours,

Tanner & Ortega, L.L.P.

  
Howard E. Tanner

cc: AUSA Samuel Raymond (By ECF and Email/PDF)  
AUSA Courtney Heavey By ECF and Email/PDF)

<sup>1</sup> By First Amended Standing Order dated January 5, 2021, Chief Judge Colleen McMahon made such finding. See, In Re: CORONAVIRUS/COVID-19 PANDEMIC, 20 MC 622 (CM) at 2.